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20 October 1985*The Morison Trial Provokes a Constitutional Argument*

When Secrets Are Passed to the Press

By ROBIN TONER

WASHINGTON — In his quiet gray suit, with his professorial air and patrician background, Samuel Loring Morison seemed an unlikely defendant in an espionage trial as he sat in Federal district court in Baltimore over the last two weeks.

This was no classic spy scenario, with a surreptitious passing of defense information to foreign agents. Mr. Morison, a former naval intelligence analyst, was being tried on espionage and theft charges for giving classified photographs to a British defense magazine. And when he was convicted Thursday, some legal experts said the law had taken a dangerous turn.

Most vocal was the American Civil Liberties Union, which assisted Mr. Morison in his defense and long portrayed his prosecution as a perilous assault on the First Amendment. The threat of such prosecutions, the union argued, will give the Government new power over what information can be published, and the debate on national security issues will be chilled. Among journalists, there was talk that the Administration would use the espionage statutes to plug leaks.

Benno Schmidt Jr., dean of Columbia Law School, sounded a similar concern. "If the Government's legal position in this case is accepted," he said, "we have an official secrets act in the United States under which any Government employee revealing defense-related information to the press could be severely punished."

"Such a construction of the espionage statutes is fundamentally at odds with 50 years of consistent legislative history."

The Justice Department dismissed such concerns as unfounded. "For the life of me, it's very mysterious to see all the arm-waving going on," said Stephen S. Trott, Assistant Attorney General in charge of the department's Criminal Division.

Mr. Trott said the A.C.L.U. was "attributing to us motives that are simply nonexistent." The Justice Department did not seek out this case as part of some agenda or program, he said. But he added: "It is our sincere hope that this reminds people that classified information cannot be leaked."

The only previous espionage prosecution involving a disclosure to the press was that of Daniel Ellsberg and Anthony Russo, in the case involving the Pentagon Papers. Charges against those men were dismissed on the grounds of prosecutorial misconduct.

The trial of Mr. Morison revolved largely around three photographs, produced by a KH-11 reconnaissance satellite, showing a Soviet vessel under construction at a Black Sea shipyard. The photographs are of striking clarity although a senior Central Intelligence Agency official testified that one of them had been taken from a distance of 500 miles.

The technology demonstrated by those photographs was at the heart of the Government's case against Mr. Morison. Witnesses for the prosecution testified that the pictures could have provided the Soviet Union with valuable insights into the KH-11 program. The

defense emphasized that KH-11 photographs had been released twice before, and that the Soviet Union already had a copy of a technical manual for the satellite system, sold to it in 1978 by a former C.I.A. employee.

While Mr. Morison did not take the stand, his persona, as defined by prosecution and defense, dominated the trial. From the prosecution came the image of a man dissatisfied with his job at the National Intelligence Support Center in Suitland, Md., eager to join the staff of *Jane's Defence Weekly*, and thus willing to give them information to strengthen his candidacy.

The defense portrayed Mr. Morison as a patriotic man who gave *Jane's* the photographs not for any personal gain, but rather to inform the public about the extent of the Soviet military buildup. In giving information to the press, he had engaged in a routine governmental practice, the defense attorneys argued.

A Troubling Case?

Morton H. Halperin, director of the Washington area office of the A.C.L.U., said he was surprised at the lack of outrage at Mr. Morison's plight. Attorneys for Mr. Morison said the verdict would be appealed, and Mr. Halperin said his group would "try to get people to understand what is at stake here."

Floyd Abrams, a New York attorney who specializes in constitutional issues, contended that the A.C.L.U. was not exaggerating the import of the case. "By its expansive definition of what constitutes espionage," he said, "the Morison case is troubling and indeed dangerous, not only for those who occasionally provide information in an unauthorized way, but also to the press and the public."

But William E. Colby, a former Director of Central Intelligence, offered a different perspective. The Morison case may make the job of the press more difficult by stemming the release of classified information, he said, but "we've got to do something to pull up our socks here and put a little discipline back in the Government."

Mr. Morison, the grandson of Samuel Eliot Morison, the naval historian, is to be sentenced Nov. 25. He faces a maximum penalty of 10 years in prison and \$10,000 in fines for each of the four counts of which he was convicted.